

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

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Refer Reply To:  
CC:CORP:01  
PLR-139543-07

Date:  
December 20, 2007

### LEGEND:

Acquiring =

Target =

Shareholder A =

Business A =

x =

Dear :

This letter responds to your representative's letter dated August 28, 2007, requesting rulings as to the Federal income tax consequences of a proposed transaction. Additional information was submitted by letters dated September 21, 2007, October 15, 2007, and November 8, 2007. The material information submitted for consideration is summarized below.

### SUMMARY OF FACTS

Acquiring is a subchapter C corporation engaged in Business A. It has outstanding Class A common stock, x% (an amount greater than 50%, but less than

80%) of which is owned by Target and the remainder owned by Shareholder A. It also has outstanding a small number of nonvoting Class B common stock owned by employees of Acquiring. Target is a subchapter C corporation that has one class of common stock outstanding, all of which is owned by two individual shareholders. Target's principal asset is the stock of Acquiring.

## PROPOSED TRANSACTION

To accomplish a number of business objectives that can be achieved by eliminating Target, such as elimination of impediments to capital markets caused by a complex and confusing corporate structure, Target and Acquiring have agreed to a transaction in which Target will merge downstream into Acquiring. The transaction will be effected pursuant to the applicable merger statute. As a result of the operation of the merger laws, Acquiring will acquire all of Target's assets in exchange for Class A common stock and will assume Target's liabilities. Target will cease to exist under state law. The Acquiring stock received in the transaction will be distributed to the Target shareholders pursuant to the merger agreement. No fractional shares of Acquiring stock will be issued to Target shareholders.

## REPRESENTATIONS

Acquiring has made the following representations with respect to the proposed transaction:

- a) The fair market value of the Acquiring stock received by each Target shareholder will be approximately equal to the fair market value of the Target stock surrendered in the transaction.
- b) On the date of the transaction, there will be no intention by Acquiring or any person related to Acquiring (as defined in § 1.368-1(e)(3) of the Income Tax Regulations) to acquire or redeem any of the shares of Acquiring issued in the transaction either directly or through any transaction, agreement, or other arrangement with any other person.
- c) At the effective time of the transaction, Acquiring will have no plan or intention to sell or otherwise dispose of any of Target's assets acquired in the transaction, except for dispositions made in the ordinary course of business or transfers described in § 1.368-2(k)(1).
- d) Target incurred any liabilities assumed by Acquiring in the ordinary course of Target's business. The liabilities assumed will be associated with the transferred assets.

- e) After the effective time of the transaction, Acquiring will continue its historical business.
- f) Acquiring, Target, and the shareholders of Target will pay their respective expenses, if any, incurred in connection with the transaction.
- g) At the effective time of the transaction, there will be no intercorporate indebtedness existing between Target and Acquiring that was issued, acquired, or will be settled at a discount.
- h) At the effective time of the transaction, no two parties to the transaction will be investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv) of the Internal Revenue Code.
- i) At the effective time of the transaction, Target will not be under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A).
- j) At the effective time of the transaction, the fair market value of Target's assets transferred to Acquiring will exceed the sum of the liabilities assumed by Acquiring, if any.
- k) The fair market value of Acquiring's assets will exceed the amount of the liabilities of Acquiring immediately after the transaction.

## RULINGS

Based solely on the information submitted and the representations set forth above, we rule as follows:

1. Provided the transaction qualifies as a statutory merger under applicable law, the transaction will be a reorganization under § 368(a)(1)(A). Target and Acquiring will each be a "party to a reorganization" under § 368(b).
2. Target will recognize no gain or loss on the transfer of its assets to Acquiring pursuant to the plan of merger and in exchange for Acquiring stock and the assumption by Acquiring of any liabilities of Target (§§ 361(a) and 357(a)).
3. Target will recognize no gain or loss on the distribution of Acquiring stock to its shareholders pursuant to the plan of merger (§ 361(c)(1)).
4. A Target shareholder will recognize no gain or loss on the receipt of Acquiring stock in exchange for Target stock pursuant to the plan of merger (§ 354(a)(1)).

5. A Target shareholder's total basis in the Acquiring stock received pursuant to the plan of merger will be the same as the total basis in the Target stock surrendered in exchange therefore (§ 358(a)(1)). The shareholder may specifically identify basis under § 1.358-2.
6. A Target shareholder's holding period in the Acquiring stock received pursuant to the plan of merger will include the period during which the Target shareholder held the Target stock surrendered in exchange therefore, provided that the Target stock was held as a capital asset on the date of the change (§ 1223(1)). The holding period will reflect an identification of specific basis under § 1.358-2.
7. Acquiring will recognize no gain or loss on the receipt of Target assets in exchange for Acquiring stock and the assumption of Target liabilities, if any (§ 1032(a)).
8. Acquiring's basis in each asset of Target acquired in connection with the plan of merger will be the same as the basis of the asset in the hands of Target immediately before the merger § 362(b).
9. Acquiring's holding period in each asset of Target received in connection with the plan of merger will include the period for which the asset was held by Target (§ 1223(2)).
10. As provided by §§ 381(c)(2) and 1.381(c)(2)-1, Acquiring will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Target as of the close of the date of the transaction. Any deficit in the earnings and profits of Acquiring or Target will be used only to offset earnings and profits accumulated after the date of that day.
11. Pursuant to §§ 381(a) and 1.381(a)-1, Acquiring will succeed to and take into account the items of Target described in § 381(c) as of the close of the day of the transaction. The items will be taken into account by Acquiring subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder.

## CAVEATS

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

We express no opinion about the tax treatment of the transactions described above under other provisions of the Internal Revenue Code or Income Tax Regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions described above that are not specifically covered by the above rulings.

#### PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, any taxpayer filing its return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be sent to your authorized representative.

Sincerely,

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Mark J. Weiss  
Assistant to the Chief, Branch 1  
Office of Associate Chief Counsel (Corporate)

cc: